

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-222691

DATE: June 2, 1986

MATTER OF: Contemporary Roofing, Inc.

DIGEST:

1. Cancellation of invitation for bids after bid opening is supported by a compelling reason and, therefore, is not improper where contracting agency determined that solicitation overstated government's minimum needs.
2. Claims for bid preparation costs and attorney's fees are denied where protest of solicitation cancellation is without merit.

Contemporary Roofing, Inc. (CRI) protests the cancellation of invitation for bids (IFB) No. N62467-84-B-0586, issued by the Southern Division, Naval Facilities Engineering Command, for roof repairs at the Naval Training Center, Orlando, Florida. We deny the protest.

The solicitation incorporated Navy specification No. 06-84-0586, which sets forth the following requirement for elastomeric sheet roofing:

"1.2 QUALIFICATIONS OF APPLICATOR: The application of sheet roofing system shall be accomplished by an applicator who is approved by the sheet roofing system manufacturer."

The specification further requires in paragraph 2.1.1 that the elastomeric sheet roofing system be one of six specified name brands which are listed in subparagraphs 2.1.1.1 - 2.1.1.6.

In response to the solicitation, bids from eleven firms were received and opened on January 23, 1986. The roofing system offered by the low bidder, Single Ply International, at \$211,217, was not one of the six listed as acceptable in the solicitation specifications. The protester submitted the second low bid of \$219,000.

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The agency determined that the roofing system offered by Single Ply International was acceptable for the construction project at Orlando, and would perform as well as the roofing systems listed in the solicitation. The Navy thus essentially concluded that the solicitation overstated its minimum needs. The agency also determined that the specifications were defective because, although not labeled as such, the list of acceptable roofing systems in the solicitation was the equivalent of a qualified products list, but was not compiled in accordance with the procedures required by the Federal Acquisition Regulation (FAR), 48 C.F.R., Part 9.2 (1984). For these reasons, the Navy rejected all bids and canceled the solicitation.

The protester does not dispute that the roofing system offered by the low bidder will perform as well as the listed ones. CRI essentially contends that the Navy had no compelling reason to cancel the solicitation, but "is attempting to find a reason to cancel the original solicitation" so that it may take advantage of the low bid price. The protester maintains that the solicitation should be reinstated and award made to it as the low, responsive and responsible bidder.

The agency states that the protest should be dismissed under our Bid Protest Regulations, 4 C.F.R. § 21.1(f), because the contracting officer never received from CRI a copy of its protest to our Office as required by our regulations at 4 C.F.R. § 21.1(d). In response to the Navy's position, CRI's counsel has submitted an affidavit stating that he mailed a copy of the protest to the contracting officer at the same time he mailed the protest to our Office.

Our Bid Protest Regulations require that a copy of the protest to our Office be received by the contracting officer, within one day of the date it is filed with our Office. 4 C.F.R. § 21.1(d). Section 21.1(f) of our regulations provides that a protest may be dismissed for failure to comply with the requirement of section 21.1(d), and, thus, gives us the discretion to grant exceptions to dismissal in such instances. See Boston Intertech Group, Ltd., B-220045, Dec. 13, 1985, 85-2 C.P.D. ¶ 657.

In this case, the agency filed its administrative report on the protest in a timely manner and never informed our Office, prior to the submission of its report, of the contracting officer's failure to receive a copy of the

protest from the protester. Under these circumstances, we believe that an exception to 4 C.F.R. § 21.1(f) is appropriate since the agency's ability to meet the 25-day statutory deadline for filing its report was not impaired, and a strict application of the regulation here would serve no useful purpose. See Boston Intertech Group, Ltd., B-220045, supra, 85-2 C.P.D. ¶ 657 at 3. We will, therefore, consider the protest on its merits.

The preservation of the integrity of the competitive bidding system dictates that after bids have been opened, award must be made to the responsible bidder that submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. FAR, 48 C.F.R. § 14.404-1(a)(1) (1984). The use of specifications which do not adequately describe the government's minimum needs generally provides a compelling reason for cancellation. Jarrett S. Blankenship Co., B-211582, Oct. 31, 1983, 83-2 C.P.D. ¶ 516. Contracting officials have broad discretion to decide whether or not appropriate circumstances for cancellation exist, and our review is limited to considering the reasonableness of the exercise of that discretion. Flight Refueling, Inc., B-216709, May 13, 1985, 85-1 C.P.D. ¶ 536. The protester bears the burden of showing that the determination to cancel the solicitation was unreasonable. See American Marine Decking Systems, Inc., B-216580, Mar. 1, 1985, 85-1 C.P.D. ¶ 256.

In view of the Navy's determination that the needs of the government could be met by at least one roofing system in addition to those to which the IFB was restricted, we find that this overstatement of the government's minimum needs constituted a compelling reason to cancel the solicitation. Aviation Enterprises, Inc.--Reconsideration, B-215662.4, Dec. 3, 1984, 84-2 C.P.D. ¶ 603; see also Jarret S. Blankenship Co., B-211582, supra, 83-2 C.P.D. ¶ 516. CRI has not shown that the Navy's determination was unreasonable. We conclude, therefore, that cancellation of the IFB was not improper.

The protester also requested award of bid preparation costs and attorney's fees. Since we do not find improper the cancellation of the IFB, there is no legal basis upon

which CRI may be allowed costs as requested. R.S. Data Systems, B-220961, Nov. 21, 1985, 65 Comp. Gen. , 85-2 C.P.D. ¶ 588.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel